

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ZOLTAN FRENKEL,

Plaintiff, **DECLARATION OF**
CHRISTOPHER L. HEER
CONCERNING REMOVAL

-against-

NEW YORK CITY OFF-TRACK BETTING
CORPORATION,

Case No. 08 Civ. 6050
(LTS)(AJP)

Defendant.
----- X

CHRISTOPHER L. HEER declares, pursuant to 28 U.S.C. § 1746 and subject to the penalties of perjury, that the following is true and correct:

1. I am an Assistant Corporation Counsel in the office of Michael A. Cardozo, Corporation Counsel for the City of New York, and submit this declaration on behalf of defendant New York City Off-Track Betting Corporation ("OTB") in response to Your Honor's July 10, 2008 Initial Conference Order.


2. In response to 3(b) of said Order, defendant did not remove this action within 30 days of its commencement as the original complaint in this action did not contain any federal causes of action. Rather, defendant removed this action to federal court within 30 days of receipt of plaintiff's first amended complaint because, as detailed below, the first amended complaint was the first pleading to contain causes of action arising from federal law. See 28 U.S.C. §1446(b) ("If the case stated by the initial pleading is not removable, a notice of removal may be filed, a notice of removal may be filed within 30 days after receipt by the defendant...of a copy of an amended pleading...from which it may first be ascertained that the case is one which is or has become removable...")

3. On January 23, 2008, plaintiff served a summons and complaint, Index Number 100707/08, New York County, upon defendant. This complaint contained breach of contract claims under New York State law and no federal claims. Defendants thereafter moved to dismiss those claims.

4. On June 6, 2008, plaintiff served opposition papers to defendant's motion to dismiss which included, inter alia plaintiff's first amended complaint. On June 16, 2008, plaintiff served the first amended complaint upon defendant. Unlike the initial complaint, the first amended complaint contained a claim pursuant to 42 U.S.C. §1983 alleging that defendant violated plaintiff's constitutional rights.

5. On July 2, 2008, within 30 days of receipt of plaintiff's first amended complaint containing these federal claims, defendant filed its Notice of Removal in this Court.

Dated: New York, New York
July 21, 2008



Christopher L. Heer
Assistant Corporation Counsel

Docket No. 08 Civ. 6050 (LTS)(AJP)

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NEW YORK CITY OFF-TRACK BETTING CORPORATION,	Defendant.
DECLARATION OF CHRISTOPHER L. HEER CONCERNING REMOVAL	
MICHAEL A. CARDOZO Corporation Counsel of the City of New York Attorney for Defendants 100 Church Street, Room 2-125 New York, N.Y. 10007 Of Counsel: Christopher L. Heer Tel: (212) 788-0960 Matter No. 2008-000147	
Due and timely service is hereby admitted.	
New York, N.Y....., 2008	
..... Esq.	
Attorney for	